

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC., :
Plaintiff-Counterclaim Def., : CIVIL ACTION NO. 3:CV-07-1600
v. :
: (JUDGE CAPUTO)
LEACHCO, INC., :
Defendant-Counterclaim :
Plaintiff/Third Party Plaintiff, :
and :
JAMIE S. LEACH, :
Counterclaim Plaintiff/ Third :
Party Plaintiff, :
v. :
JOHN M. KIEFER, JR., :
Third Party Defendant :
:

MEMORANDUM ORDER

Before me is Motion of Leachco, Inc. and Jamie S. Leach For Leave to File Second Amended Answer (Doc. 72) in which Leachco seeks to add a counterclaim against Babyage.com, Inc. for false patent marking and violation of 35 U.S.C. § 287(a).

Essentially the motion is opposed because the motion is fifteen days beyond the deadline contained in the Case Management Order and because the claim/or the § 287(a) violation was known by movant prior to the deadline for amendment in the Case Management Order. Leachco, on the other hand, argues that the

discovery of the violation was delayed by the delay of Babyage in providing discovery responses.

While the motion is beyond the deadline in the Case Management Order, the timing of discovery responses did contribute to the time one would expect Leachco to react to its discovery of the § 287(a) violation. Moreover, there is a general policy favoring amendments absent undue delay or prejudice. See Roberson v. Hayti Police Dep't, 241 F. 3d 992, 995 (3d Cir. 2001)(citing Foman v. Davis, 371 U.S 178, 182 (1962)). I find no undue delay as noted, and the counterclaim for false patent marking is straight forward and does not require extensive discovery, if any.

Therefore the motion will be granted and the amendment allowed.

NOW, this 22nd day of October, 2008, **IT IS HEREBY ORDERED** that the Motion of Leachco, Inc. and Jamie S. Leach For Leave to File Second Amended Answer (Doc. 72) is **GRANTED**.

The Clerk of Court is directed to detach the Second Amended Answer and Counterclaims (Doc. 72-2) attached to Defendants' Motion and file it of record forthwith. The Second Amended Answer and Counterclaims shall be deemed to have been served on the date of this Order for the purpose of determining the time for response under Fed. R. Civ. P. 15 (a).

/s/ A. Richard Caputo

A. Richard Caputo

United States District Judge